

In the Matter of the Petition of)
)
 ACCERIS MANAGEMENT AND)
 ACQUISITION LLC)
)
 For Approval to Acquire Certain)
 Assets of Acceris Communications)
 Corp.)
)
 _____)

DECISION AND ORDER NO. 22372

Karen Hiest.
Chief Clerk of the Commission

R. H. Gros.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	
ACCERIS MANAGEMENT AND)	Docket No. 05-0153
ACQUISITION LLC)	
)	Decision and Order No. 22372
For Approval to Acquire Certain)	
Assets of Acceris Communications)	
Corp.)	
_____)	

DECISION AND ORDER

By this Decision and Order, the commission incorporates by reference the commission's records and findings in Docket No. 05-0165, and waives the requirements of Hawaii Revised Statutes ("HRS") §§ 269-7(a) and 269-19 and Hawaii Administrative Rules ("HAR") §§ 6-61-101 and 6-61-105, to the extent applicable.

I.

Background

A.

Description of Subject Entities

Acceris Management and Acquisition LLC ("Acceris"), a Minnesota limited liability company, is presently authorized to provide resold telecommunications services in the State of Hawaii.¹

¹The commission granted Acceris its Certificate of Authority ("COA") by Decision and Order No. 22314, filed on March 10, 2006, in Docket No. 05-0165.

Acceris is wholly owned by North Central Equity, LLC ("NCE"), a Minnesota limited liability company. NCE is a privately owned holding company "with experience in the telecommunications industry."² Acceris is presently in the process of obtaining authority to provide local exchange telecommunications services throughout the United States.

Acceris Communications Corp. ("ACC"), a Delaware corporation, provides domestic interstate and international telecommunications service throughout the United States. ACC has authority to provide, and is currently providing, intrastate telecommunications services in the contiguous 48 states, Hawaii, and the District of Columbia.³ ACC is also authorized to provide competitive local exchange services in a number of states, including, but not limited to, Florida, Massachusetts, New Jersey, New York, and Pennsylvania.

²Petition for Authority for Acceris Management and Acquisition LLC to Acquire Certain Assets of Acceris Communications Corp., filed June 22, 2005 ("Application"), at 2.

³ACC initially received a COA to provide intrastate telecommunications services on a resold basis within the State under the name PT-1 Counsel, Inc. See Decision and Order No. 18089, filed on September 28, 2000, in Docket No. 00-0208. Thereafter, PT-1 Counsel, Inc.'s corporate name was changed to Acceris Communications Corp. On February 16, 2006, in Docket No. 00-0208, ACC filed a request, which is currently pending, to voluntarily surrender its COA. The commission notes that ACC's request to surrender its COA does not affect the commission's decision in this docket since, as discussed further below, the commission does not review Acceris' and ACC's (jointly, the "Applicants") request in this docket to transfer ACC's COA to Acceris. The commission deems that request as moot since Acceris has already been granted a COA in Decision and Order No. 22314, filed on March 10, 2006, in Docket No. 05-0165.

B.

Application

On June 22, 2005, Acceris and ACC jointly filed an Application seeking approval, pursuant to HRS §§ 269-7(a) and 269-19, to consummate a transaction whereby Acceris will acquire the assets and assume certain liabilities of ACC's telecommunications business, as described in the Application ("Proposed Transaction").⁴ Specifically, Acceris seeks to acquire all "PUC/PSC/FCC licenses, [certificates of public convenience and necessity] and tariffs authorizing [ACC] to provide telecommunications services in all relevant states to the extent assignable or transferable."⁵ Acceris also seeks to acquire the customer base of ACC.

Applicants contend that the Proposed Transaction "will serve the public interest by enabling [Acceris] to achieve increased economies of scale," and that it "will be virtually transparent to ACC customers in terms of the services that they receive."⁶ Applicants further state that, following the consummation of the Proposed Transaction, Acceris "will be le[]d by a team of well-qualified managers comprised of its existing personnel."⁷ In this regard, Acceris "expects that the ample managerial, technical and financial expertise of this managerial

⁴The Applicants served copies of the Application on the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate").

⁵Application, at 4.

⁶Id.

⁷Id. at 4-5.

team will enable [Acceris] to provide high quality service to ACC customers as well as to expand its customer base."⁸ In sum, Applicants maintain that "[t]he proposed acquisition will . . . promote competition in the Hawaii telecommunications services market and serve the public interest."⁹

C.

Consumer Advocate's Statement of Position

On November 15, 2005, the Consumer Advocate filed its Statement of Position ("Statement of Position") stating that it does not object to the approval of the Application. Alternatively, the Consumer Advocate suggested that the commission could, on its own motion, waive the approval requirements of HRS § 269-19, pursuant to HRS § 269-16.9 and HAR § 6-80-135.

II.

Discussion

HRS § 269-7(a) authorizes the commission to examine the condition of each public utility, its financial transactions, and "all matters of every nature affecting the relations and transactions between it and the public or persons or corporations."

HRS § 269-19 provides that no public utility corporation shall "directly or indirectly, merge or consolidate

⁸Id. at 5.

⁹Id.

with any other public utility corporation without first having secured from the . . . commission an order authorizing it so to do." HRS § 269-19 also states: "Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void."

Having reviewed the record,¹⁰ with respect to Applicants' request for approval to transfer ACC's COA to Acceris, the commission specifically incorporates by reference to this docket the commission's findings in Decision and Order No. 22314, filed on March 10, 2006, in Docket No. 05-0165, in which the commission granted Acceris a COA. Accordingly, the commission deems Applicants' request in this docket for a transfer of ACC's COA to Acceris as moot.

With respect to the remainder of Applicants' request in this docket for approval to transfer certain assets of ACC to Acceris, the commission finds and concludes that the Proposed Transaction falls under the purview of HRS §§ 269-7(a) and 269-19. Notwithstanding these regulatory requirements, HRS § 269-16.9 also permits the commission to waive regulatory requirements applicable to telecommunications providers if it determines that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits the commission to waive the applicability of any of the provisions of HRS chapter 269 or any rule (except provisions of HRS § 269-34 or

¹⁰The commission takes official notice of all commission records relating to Acceris and ACC, pursuant to HAR § 6-61-48.

provisions of HAR chapter 6-80 that implement HRS § 269-34), upon a determination that a waiver is in the public interest.

The commission finds that the telecommunications services currently provided by ACC are fully competitive, and ACC is a non-dominant carrier in Hawaii. The commission also finds that the Proposed Transaction is consistent with the public interest, and that competition, in this instance, will serve the same purpose as public interest regulation. Thus, the commission concludes that the applicable requirements of HRS §§ 269-7(a) and 269-19 should be waived with regards to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135.¹¹ Similarly, based on the findings and conclusions stated above, the commission will also waive the provisions of HAR §§ 6-61-101 and 6-61-105, to the extent that the Application fails to meet any of the filing requirements set forth therein.

¹¹The commission will continue to examine each application or petition and make determinations on a case-by-case basis as to whether the applicable requirements of HRS §§ 269-7(a) and 269-19 should be waived. The commission's determination, in the instant case, of the applicability of HRS §§ 269-7(a) and 269-19 is based on the commission's review of the present Application. Thus, the commission's waiver in this instance of the applicability of HRS §§ 269-7(a) and 269-19 should not be construed by any public utility, including Acceris, ACC, and NCE, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

III.

Orders

THE COMMISSION ORDERS:

1. The commission takes official administrative notice of the filings of Docket No. 05-0165, and in particular, Decision and Order No. 22314, filed on March 10, 2006, in which the commission granted Acceris a COA. In light of the commission's findings in Decision and Order No. 22314, the commission deems Applicants' request to transfer ACC's COA to Acceris in this docket as moot, and the commission does not review that request. Acceris, however, is still required to comply with all conditions set forth in Decision and Order No. 22314 in order to be duly authorized in the State as a reseller of telecommunications services.


2. With respect to the remaining transfer of assets (besides ACC's COA) contemplated by the Proposed Transaction, the commission finds that the requirements of HRS §§ 269-7(a) and 269-19, to the extent applicable, are waived. The commission further finds that the filing requirements of HAR §§ 6-61-101 and 6-61-105, to the extent applicable, are waived.

3. As to the proposed transfer of customers from ACC to Acceris, in compliance with 47 CFR § 64.1120(e) and HAR § 6-80-123, Acceris shall provide notice to affected customers of the transfer at least thirty (30) days prior to the transfer, and shall file a copy of the customer notification with the commission and Consumer Advocate.

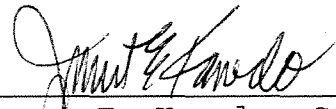
4. Failure to comply with the requirements in paragraphs 1 and 3, above, may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii APR - 5 2006.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kaiulani E.S. Kidani
Commission Counsel

05-0153.EH

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22372 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

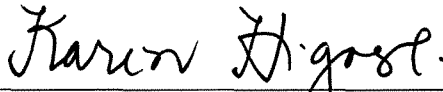
JOHN E. COLE,
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

PATRICK D. CROCKER, ESQ.
EARLY, LENNON, CROCKER, AND BARTOSIEWICZ, P.L.C.
900 Comerica Building
Kalamazoo, MI 49007

Attorney for Acceris Management and Acquisition LLC

LANCE J.M. STEINHART, ESQ.
1720 Windward Concourse, Suite 250
Alpharetta, GA 30005

Attorney for Acceris Communications Corp.



Karen Higashi

DATED: APR - 5 2006